

Backgrounder

Combating Maritime Piracy

Author: [Stephanie Hanson](#), Associate Director and Coordinating Editor

Updated: April 13, 2009

Introduction

Maritime piracy has been on the rise for years, according to the International Maritime Bureau's (IMB) Piracy Reporting Center. But until 2008, when pirates operating off the coast of Somalia hijacked a ship full of Russian tanks and an oil supertanker, the crime drew limited international attention. By early 2009, more than a dozen countries had deployed their navies to the Gulf of Aden to counter piracy, and the United Nations passed four resolutions in 2008 on the issue. In April 2009, stakes grew higher after the U.S. Navy killed three Somali pirates, and took one captive in the rescue operation of a U.S. cargo ship captain taken hostage. There are a range of measures available to combat piracy--from onboard defense systems to naval deployments to preemptive strikes. Yet analysts agree the complexities of international maritime law make it difficult to prosecute pirates once they are caught. Some observers are cautiously optimistic about naval cooperation in the Gulf of Aden, but many experts say they anticipate further increases in piracy--not just off East Africa, but worldwide.

Nature and Severity of the Threat

Pirate attacks are largely confined to four major areas:

- The Gulf of Aden, near Somalia and the southern entrance to the Red Sea;
- The Gulf of Guinea, near Nigeria and the Niger River delta;
- The Malacca Strait between Indonesia and Malaysia;
- The Indian subcontinent, particularly between India and Sri Lanka.

In 2008, maritime piracy reached its [highest level](#) since the International Maritime Bureau's Piracy Reporting Center began tracking piracy incidents in 1992. Global piracy increased 11 percent, with piracy in East Africa up a stunning 200 percent. Of the forty-nine successful hijackings, forty-two occurred off the coast of Somalia, including the capture of an oil supertanker, the *Sirius Star*. Five hijackings were off

the Nigerian coast, though the IMB suggests attacks in that area are underreported. In other areas of the world, including Indonesia, piracy dropped.

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There is no quantitative research available on the total cost of global piracy. Estimates vary widely because of disagreement over whether insurance premiums, freight rates, and the cost of reroutings should be included with, for instance, the cost of ransoms. Some analysts suggest the cost is close to \$1 billion a year, while others claim losses could range as high as \$16 billion. Some experts such as Martin N. Murphy, author of a [2007 study on piracy and terrorism](#), warn against exaggerating the threat posed by maritime pirates. He notes that even \$16 billion in losses is a small sum in comparison to annual global maritime commerce, which is in the trillions of dollars.

Analysts generally express greater concern about the potential geopolitical repercussions of hijackings at sea. As journalist John S. Burnett writes in his 2002 book *Dangerous Waters: Modern Piracy and Terror on the High Seas*, maritime experts worry that "one attack on the wrong ship at the wrong time" could result in "the closure of one of the strategic international waterways upon which so much of the world economy depends." For instance, 60 percent of the world's crude oil moves by ship, yet oil companies spend more money protecting their petrol stations than their supertankers.

Defining Piracy-Is it Terrorism?

The hijacked supertanker scenario provokes nightmares not only for the shipping industry, but for terrorism analysts. Maritime experts debate the links between piracy and terrorism. Many are adamant that piracy is not terrorism. As defined in the UN Convention on the Law of the Sea, piracy is "any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft." As Peter Chalk writes in a [2008 analysis \(PDF\)](#) for the RAND Corporation, pirates are out for material gain, while terrorists are "assumed to be seeking the destruction of the global maritime trade network as part of their self-defined economic war against the West." Other experts note the lack of evidence linking the two groups. "There is no worthwhile evidence, despite the speculation, of any cooperation between [pirates and insurgent/terrorists](#)" (PDF), Murphy asserts in a 2007 article for the *Naval War College Review*.

But some experts note two areas in which piracy and terrorism might overlap. The first is legal. Both groups are nonstate actors.; according to the Law of the Sea, piracy must occur on the high seas (outside territorial boundaries), and outside the jurisdiction of any state. As Douglas R. Burgess Jr. argues in a *New York Times* op-ed, "[Both crimes involve bands of brigands](#) that divorce themselves from their nation-states and form extraterritorial enclaves; both aim at civilians; both involve acts of homicide and destruction, as the United Nations Convention on the High Seas stipulates, 'for private ends.'" He suggests that the world adopt a new legal definition of piracy that acknowledges the piracy-terrorism link.

"When governments clamp down, attacks come down." – Pottengal Mukundan, head of the International Maritime Bureau

The second area of overlap is financial. In Somalia, there is speculation that pirates are funding Islamic terrorist organizations. Bruno Schiemy, former head of the UN Monitoring Group on Somalia, writes in *Jane's Intelligence Review* that [links between Somali pirate groups](#) and the al-Shabaab Islamic group are growing. Pirates have provided training to the maritime wing of al-Shabaab, and al-Shabaab is using some pirate groups for arms smuggling. Roger Middleton, author of an [October 2008 report](#) for UK-based think tank Chatham House on Somali piracy, says that these connections are "tenuous." However, he thinks it's likely that money does make its way from the pirates to organizations like al-Shabaab, though "this money is proportionate to how significant they are within Somalia rather than ideological alignment with the pirates."

Mechanisms for Combating Piracy

A range of options exists for combating maritime piracy, but experts stress that most of the current tactics are defensive in nature, and do not address the state instability that allows piracy to flourish. The mechanisms used or under consideration in the most prevalent piracy area, the Gulf of Aden, can be classified as follows:

- **Onboard deterrents.** Individual ships have adopted different onboard deterrents. Some use rudimentary measures such as fire hoses, deck patrols, or even carpet tacks to repel pirates. Others use a nonlethal electric screen with a loudspeaker system that emits a pitch so painful it keeps pirates away. Most do not arm their crews, both because ship workers tend to be unskilled and because many do not want to carry weapons, fearing that pirates will target them if they are armed. Those ships willing to spend more to protect their cargo employ private security guards onboard, though such guards have a mixed record of piracy deterrence. Blackwater, a private security contractor, has made a ship available for escorting ships through the Gulf of Aden, but as of January 2009, no shipping companies had used it. The shipping industry has urged greater action on the part of the world's navies. But [many ships are not even using basic deterrents](#), writes retired U.S. Navy Commander John Patch in *Proceedings* magazine.
- **Naval deployments.** By January 2009, an estimated thirty ships were patrolling an area of about 2.5 million square miles. More than a dozen countries--including Russia, France, the United Kingdom, India, China, and the United States--had sent warships to the Gulf of Aden to deter pirates. There were also two multinational anti-piracy patrols in the area: the European Union's military operation, called [EU NAVFOR](#), which began in December 2008; and a multinational contingent, known as [Combined Task Force 150](#), which was originally tasked with counterterrorism efforts off the Horn of Africa. The United States announced a new task force, [CTF-151](#), in January 2009. Some analysts, including a blogger for the U.S. Naval Institute, suggest that the new task force will allow

the United States to [seek a non-Western approach](#) to counterpiracy by partnering with Eastern navies.

The success with which the navies in the Gulf of Aden have deterred attacks is unclear. By some measures, pirates are finding it harder to hijack ships: While 53 percent of attacks were successful in August 2008, only 31 percent were successful in October 2008. However, none of the navies in the area were able to prevent the hijacking of an oil supertanker in November 2008. Several experts note that when these navies leave, it's likely that piracy will surge again, particular if Somalia remains unstable.

- **Regional anti-piracy patrols.** Some experts have suggested that East African and Middle Eastern countries should work together to patrol the coast of Somalia and the Gulf of Aden. Peter Lehr, a lecturer in terrorism studies at the University of St. Andrews, writes that [such patrols could be modeled \(Guardian\)](#) on those that the navies of Indonesia, Malaysia, Singapore, and Thailand conducted in the Malacca Strait. Western navies could provide technical assistance and secondhand ships, he suggests. A contact group on Somali piracy, convened by the United States at UN headquarters in January 2009, suggested the creation of a [regional counterpiracy coordination center](#). A similar information-sharing center in Southeast Asia is widely credited with reducing piracy attacks. Pottengal Mukundan, head of the International Maritime Bureau, highlights the efforts of the Indonesian and Malaysian governments. "When governments clamp down, attacks come down," he says.
- **Establishing a Somali coast guard.** Chatham House's Middleton recommends creating an internationally administered coast guard for Somalia, run by the African Union or the United Nations. "Navies are not designed for dealing with criminals, they are designed for fighting wars," he says. "In the absence of a police force inside Somalia, this might be the most effective way of doing it." Such a project would present tremendous challenges, however, from finding qualified individuals within Somalia to determining when and how to hand over such a body to the Somalian government. Murphy suggests the coast guard could be funded by the shipping industry "under UN mandate as a more honorable cost of doing business than ransom."

Experts unanimously stress that the only effective long-term piracy deterrent is a stable state. When Somalia was briefly under the control of the Islamic Courts Union in 2006, piracy stopped completely. Until recently, sovereignty prevented outside states from targeting inland pirate infrastructure. A UN resolution passed on December 2, 2008, allows states to enter Somalia's territorial waters in pursuit of pirates, and another resolution passed on December 16, 2008, implicitly authorizes land pursuit.

Legal Complications to Combating Piracy

The inability of Somalia to apprehend and prosecute its own pirates creates numerous legal complications for the outside states that are conducting antipiracy patrols in the Gulf of Aden. Because so many nations have a vested interest when a ship is hijacked, it's not immediately clear which country should prosecute pirates. "Consider a typical case: a ship built in Japan, owned by a brass-plate company

in Malta, controlled by an Italian, managed by a company in Cyprus, chartered by the French, skippered by a Norwegian, crewed by Indians, registered in Panama, financed by a British bank, carrying a cargo owned by a multinational oil company, is attacked while transiting an international waterway in Indonesian territory and arrested in the Philippines," writes journalist Burnett in his book on piracy. Legal scholars recommend that apprehended pirates should be prosecuted in the region they are arrested, but in the case of piracy in the Gulf of Aden, East African countries have limited resources for their judicial systems.

**"No one wants to be a dumping ground for difficult problems." –
James Kraska**

The United Nations attempted to address the prosecution of pirates in its 2008 resolutions on Somali piracy. None of its 2008 resolutions force a state to accept suspected pirates, but the December 2 resolution does include a clause that goes toward establishing a framework for prosecution. The clause, based on the 1988 UN Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, obliges coastal states who signed the convention to accept pirates for prosecution unless they can explain why the convention does not apply. Some legal experts say the UN resolution does not go far enough to establish a legal mechanism. Writing in the *World Policy Journal*, James Kraska and Brian Wilson recommend that the major shipping nations and regional states [develop agreements](#) "to enable real-time coordination for dealing with detainees, sorting out where they will be temporarily detained and the venue for prosecution." They note that successful models for such agreements already exist, such as the United States' maritime operational threat response plan, and maritime narco-trafficking agreements in the Caribbean.

It's also possible to establish bilateral agreements on pirate prosecution. In mid-January 2009, the United States was working to conclude such an agreement with Kenya. The European Union was working on similar agreements. "We are working with a number of countries on this issue," explained an EU Navfor spokesman to *Lloyd's List*. "[There is a need to prosecute](#), but a lot will depend on the individual circumstances of a capture and where [the pirates] are detained." It remains unclear how these agreements will be implemented. "Even if you have an agreement with a country, no one wants to be a dumping ground for difficult problems," says Kraska. "That's why in the past some of these folks have stayed on board warships for months at a time because there is nothing else to do with them." But maritime experts say that creating sufficient risk for pirates is critical to deterring and reducing piracy. "After enough of them are put in jail, they may say it's not worth it," says Kraska.

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